

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST;
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY;
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE
FUND; DISTRICT COUNCIL 37, AFSCME -
HEALTH & SECURITY PLAN; JUNE
SWAN; MAUREEN COWIE and BERNARD
GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation; and McKESSON
CORPORATION, a Delaware corporation,

Defendants.

C.A. No. 1:05-CV-11148-PBS

NOTICE OF FILING THIRD-PARTY DOCUMENT

Pursuant to the Court's direction, Plaintiffs attach the document from third-party Blue Cross Blue Shield of Massachusetts, bates numbered BCBSMA MCKESSON-0043-46, which was referenced in open court at the May 22, 2007 hearing on class certification (Slides 32-35 in the notebook provided to the Court).

DATED: May 23, 2007

By /s/ Steve W. Berman

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CERTIFICATE OF SERVICE

I, Steve W. Berman, hereby certify that a true and correct copy of the above document was served on the attorney of record for each party via the Court's electronic filing system this 23rd day of May, 2007.

By /s/ Steve W. Berman
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BlueCross BlueShield
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Interoffice Memo

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TO: Bruce Butler
FROM: Mark Stevens
CC: Kim Olson, Cindy Bennett, Tim Fitzgibbons, Matt Connell, Tony Centrella
SUBJECT: AWP Increases – Follow Up
DATE: May 10, 2002

This memo is a follow up to the questions raised regarding the AWP increase notification provided by ESI to BCBSMA several weeks ago. Through conversations with ESI and discussions with an external consultant (Bill Mincy), we have been able to obtain the following facts:

- There are two companies that are generally relied upon in the pharmaceutical industry in terms of setting AWP for pharmaceuticals. These companies are First Data Bank and MediSpan (now known as Facts & Comparisons). Based on discussions with both ESI and Bill Mincy, the methodology used by each company to determine AWP is very consistent, resulting in little variation between the AWP's established by each; ESI utilizes First Data Bank.
- Although AWP is the top line cost for each unique drug and dosage form dispensed by pharmacies - and is therefore generally used as the basis from which plans negotiate pricing discounts with PBM's and PBM's use to negotiate pricing discounts with the pharmacy network - it is not the actual price paid for the drugs by the dispensing pharmacy. That price is known as the WAC, or wholesale acquisition cost. WAC is a price negotiated between the buyer (pharmacy or wholesaler) and the manufacturer. Differences between AWP and WAC for certain drug classes generally range between 16% - 20%.
- The unusual increase in AWP noted by ESI in its email to us on 4/16/02 appears to have been generated as a result of pressure from the government (most likely Medicare / Medicaid) to standardize the differences between AWP and WAC across drug classes. Based on the limited information available to ESI, that standardization appears to be moving toward an AWP that equates to WAC+ 20%. (As a general note, ESI uncovered the AWP increase as a result of regular reviews they perform on annual price adjustments, the first of which generally take place in January and February of each year. In the past, the first wave of increases resulted in AWP going up between 1% - 1.5%; this year, the increase they noted was over 2.5%. Given the annual timeframe for the FDB AWP adjustments and the resulting time for ESI to complete their review, this was not something they were aware of when we were negotiating the new contract terms at the end of 2001).

- Our conversations with ESI and Bill Mincy indicated that similar increases in AWP are being seen in the Medispan / Facts&Comparisons pricing as well.
- First Data Bank has still not confirmed directly the reasons underlying the price increases. ESI obtained the insight about governmental pressure from other industry sources they have. While Bill Mincy could not confirm the government angle directly, he thought it was a credible explanation for what is happening. Bill also stated that he thought there may be governmental pressure in the other direction as a result of industry reaction to the increases being put in place. Based on the limited amount of time people have had to react to this development, however, it is too early to tell how this will bear out.
- Per Bill Mincy, the parties that benefit from the increases being seen are the manufacturers, pharmacies and wholesalers. Wholesalers benefit as a result of the increased float they are able to achieve between the purchase and sale of drugs from manufacturers, the manufacturers benefit as a result of increased pricing they receive for certain drugs and pharmacy benefit from increased reimbursement by plans and PBMs. The plans and PBM's are the parties that will be negatively impacted over the short and long term horizons as a result of these changes.

Summary: In the end, this issue is something that impacts the entire pharmacy industry, including the plans, PBMs, wholesalers, pharmacies and manufacturers. From a worst case scenario (i.e. all drug classes moving to WAC+20%), ESI has stated that this could be as much as 1.2% - 1.5% in terms of increased trend. It is still too early to tell if the worst case will fully play out or if it will be mitigated by changing attitudes on the part of the government, either on its own or as a result of pressure from the PBM, plan and general consumer communities. We have expressed our desire to ESI that this situation be closely monitored to ensure we both keep up to date with regard to the latest, most accurate information available regarding this critical issue.

Olson, Kim

From: Shramek, Gary
Sent: Thursday, July 25, 2002 12:53 PM
To: 'beichel@express-scripts.com'; 'mary.ptacek@express-scripts.com'
Cc: Olson, Kim; Stevens, Mark; Bennett, Cynthia
Subject: FDB- AWP increase in 2002

As a follow up to the information ESI provided earlier this year around FDB increasing AWP's across the board for several MFGs, can you give me an up date? It was projected that the major AWP increases would be with in the first six months of 2002 yielding an estimated BCBSMA increase ranging from 1.2 to 1.9% on our bottom line. Does this projection still hold true and have the increases stopped or slowed down? Please respond as soon as possible. thank you
Gary

Mary, I understand that Bernadette's e-mail system is down today, please forward this to the appropriate individual(s) as soon as possible

From: Connell, Matthew
Sent: Monday, December 04, 2006 9:49 AM
To: Fitzgibbons, Timothy
Subject: RE: From ESI's 10Q

I welcome the conversation. If memory serves me correctly, we didn't get any relief when FDB AWP arbitrarily went up by the 5% in question back in 2002...

-----Original Message-----

From: Fitzgibbons, Timothy
Sent: Monday, December 04, 2006 9:44 AM
To: Connell, Matthew
Subject: From ESI's 10Q

The case of New England Carpenters Health Benefits Fund, et al. v. First DataBank, et al., Civil Action No. 1:05-CV-11148-PBS (D. Mass.), is a civil class action case brought against one of several companies that report data on prescription drug prices, including "average wholesale price," or AWP. As part of a proposed settlement in the case First DataBank ("FDB") has agreed to reduce the reported AWP of over 8,000 specific pharmaceutical products by four percent. At this time the proposed settlement has received neither preliminary nor final court approval. We cannot predict the outcome of this case, or, if the settlement is approved, the precise timing of any of the proposed AWP changes.

Our contracts with our retail pharmacy networks and with our PBM and Specialty pharmacy clients generally use AWP as a benchmark for establishing pricing for most brand drugs and certain generic drugs. We have also generally used FDB's reported AWP in processing retail and home delivery transactions. In the absence of any mitigating action on our part, the proposed reduction in FDB's AWP would have a material adverse effect on the margin we earn on home delivery transactions. It may also create disruption in our retail networks due to the adverse impact on AWP-based retail pharmacy pricing. However, most of our contracts with our clients and retail pharmacies contain terms that we believe will enable us to mitigate the adverse effect of this proposed reduction in FDB's reported AWP. If the proposed settlement should become final we would exercise our contractual rights so as to mitigate as far as practicable the adverse impact to us.